

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) KIDZONE LEARNING CENTER, INC.,)	
)	
)	
Plaintiff,)	
v.)	Case No. CIV-14-0870-R
)	
(2) CAPITOL INDEMNITY CORPORATION, and)	
)	
(3) ASPEN ROOFING AND EXTERIORS, L.L.C.)	
)	
)	
Defendant.)	

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff alleges and states:

1. Plaintiff is an Oklahoma resident corporation and operates a day care facility located at 5408 South Pennsylvania, Oklahoma City, Oklahoma. Defendants Capitol Indemnity Corporation and Aspen Roofing & Exteriors, L.L.C (hereinafter "Aspen Roofing") are corporations, having incorporated and having their principal places of business in states other than Oklahoma. The amount in controversy is in excess of \$75,000.00. Federal jurisdiction is predicated on diversity of citizenship, 28 U.S.C. 1332.

2. Defendant Capitol Indemnity Corporation issued a commercial insurance policy covering certain damage and losses which may occur to the day care facility, Policy No. BP00313792.

3. On March 30, 2013, and again on May 30, 2013, the day care facility suffered damage due to wind and rain.

4. Prior to March 30, 2013, Defendant Capitol Indemnity hired a contractor, Aspen Roofing to inspect the roof for possible hail damage. Aspen Roofing's employee cut holes in the roof to check for storm damage, but negligently failed to seal the holes during or after the inspection. During the storm of March 30, 2013, water poured into the ceiling spaces and down into the facility, damaging the facility. Capitol Indemnity is responsible directly for this damage because it requested the roofing company to do the inspection, supervised the work, and had a non-delegable duty to ensure that the work was done properly.

5. Additional storm and water damage occurred during the May 30, 2013 storm.

6. The facility has had to close down due to storm and water damage, which has also led to respirable mold which may be hazardous to the health of people in the facility. Plaintiff Kidzone has and will lose income as a result.

7. Defendant Capitol Indemnity has refused to pay for damages due to storm and water damage to the facility, which are covered by the terms of the insurance contract it issued.

8. Defendant Capitol Indemnity has violated its obligation of good faith and fair dealing to its insured, Kidzone Learning Center, Inc., by adopting unreasonable interpretations of its own policy, and which would be in violation of the public policy of the State of Oklahoma.

9. Defendant Capitol Indemnity's actions in this case were willful, reckless, and intention, such that punitive damages should be imposed.

WHEREFORE, the Plaintiff Kidzone Learning Center, L.L.C., respectfully requests damages in excess of \$75,000.00, plus interest, attorney fees, and costs of this action.

Respectfully submitted,

FOSHEE & YAFFE

/s/ Gregory H. Haubrich

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ATTORNEY'S LIEN CLAIMED

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 2015, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Additionally, pursuant to 28 U.S.C. § 1446(d), true and correct copies were mailed, postage prepaid, to the following:

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